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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM(M) 318/2017 and CM Nos. 10910-12/2017

MADAN EXIM PVT LTD & ANR Petitioners
Through Mr.Sanjay Kumar, Adv.

Versus

RUCHI SOYA INDUSTRIES LTD Respondent
Through

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER
30.03.2017

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1. By the present petition filed under Article 227 of the Constitution of India, the petitioners seek to impugn the order dated 06.10.2016 by which order the right of the petitioners to cross-examine PW-2 was closed. The trial court noted that opportunity was given to cross-examine but the party in person stated that the main counsel is busy in some other court. Noting that the case is very old of 2007, the trial court closed the right of the petitioners to further cross-examine PW-2.
2. An advance copy of the petition has been served in person on the counsel for the respondent. For the reasons best known to the respondent, they have chosen not to appear before this court.
3. A perusal of the order sheets would show that PW-1 was cross-examined and discharged by this court when the matter was pending in this court on 10.05.2010, Thereafter the matter has been lingering on account of

pendency of various applications. On 29.08.2013, the Joint Registrar of this court noted that no witness is present of the plaintiff and it also further held that this calls for closure of the evidence of the plaintiff. Subject to costs of Rs.10,000/-, the plaintiff/respondent were granted one more opportunity to lead evidence. On the next date i.e. 10.02.2014, the Joint Registrar noted that the costs have been paid. PW-2 was examined and thereafter, the matter was deferred for cross-examination of the said witness. The said witness was partly cross-examined on 09.12.2014. On 23.04.2015 as PW-2 did not turn up, the cross-examination was deferred. On 20.08.2015, the next date the plaintiff/respondent sought an adjournment. Thereafter, the matter was transferred to the district court on account of change in the pecuniary jurisdiction. The trial court received the file 18.05.2016 and fixed the matter for further cross-examination of PW-2 on 06.10.2016. It is on that date that the impugned order has been passed closing the right of the petitioners to cross-examine PW-2.

4. It is clear that there has been no unnecessary delay on the part of the petitioners in cross-examining PW-2. The impugned order closing the right of the petitioners to cross-examine PW-2 causes grave prejudice to the petitioners as it penalises the petitioner for a default done on one date. The trial court in fact closed the right of the petitioner to cross-examine PW-2 only on the ground that the suit is of 2007 ignoring the past proceedings. The order suffers from material irregularity.

5. Keeping in view the above, I quash the impugned order. The petitioners are granted final opportunity to cross-examine PW-2 on the date to be fixed by the trial court. On that date no adjournment should be sought by the petitioners.

6. In view of the above, the present petition stands disposed of. All pending applications also stand disposed of.

7. Copy of the order be given dasti under the signatures of the Court Master.

JAYANT NATH, J

MARCH 30, 2017/rb